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Published Version

Skinner, P. (1996) Disputes and disparity: women in court in medieval southern Italy. *Reading Medieval Studies*, XXII. pp. 85-105. ISSN 0950-3129 Available at <https://centaur.reading.ac.uk/84741/>

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# Disputes and Disparity: Women in Court in Medieval Southern Italy<sup>1</sup>

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The backbone of many localized medieval studies is the evidence furnished by charters - records of land transactions - surviving from the area under scrutiny. The survival of charter evidence is itself patchy: much more material survives from Italy than from France or England up to 1300, for example, and the copious archives of Catalonia and north-western Spain are also providing a rich seam of information for medieval historians to mine.

Charter collections frequently include records of court cases before local officials, and these can be extremely illuminating when examining the lives and status of women in a medieval community. Of particular value is their evidence for women's voices, protesting against a given situation.

This paper will examine several important questions. Firstly, what access did women have to courts and under what circumstances might they bring a case? When they reached the court, did their tactics show any variation from men's? And finally, how successful were women in winning their cases when compared with men at court? In addition, I shall consider whether court case records are a reliable source of evidence for women's lives in general, or if a woman in court was in fact an exceptional occurrence.

In southern Italy, the survival of much documentation from the ninth to twelfth centuries allows us to examine these issues in some detail, but the area needs to be set in a wider European context. The problems raised here are methodological as well as empirical. What do court case records really tell us? Can we assess women's level of access to court, or detect gender-specific reasons for their cases? And do disputes have a function beyond settling a question of property?

It is a popular theme of medieval historiography to state that women in most medieval societies had very little public role to play. By public, the exercise of some administrative office is usually meant, but the definition might extend further, depending on the location, to

cover any kind of activity that expected the woman, rather than her male relatives, to take responsibility for her actions outside the house.<sup>2</sup>

Although disputes and their settlement in the middle ages have already received a certain amount of attention from historians,<sup>3</sup> this has not always taken account of possible gender differences in the procedures described.<sup>4</sup> However, certain general comments can be made which are equally applicable to both sexes at court.

Firstly, it is clear that recording of cases before courts was patchy. It is not the purpose here to enter into a discussion of why court cases were recorded at all, but the record was often an expression of the political power of the person presiding, rather than for the benefit of the individual litigants.<sup>5</sup> Where recording did take hold it was almost immediately followed by the development of formulaic practices and documents. Set procedures began to be followed in the pursuit of a case, so that the court hearing itself became more of a ritual episode in a process of disputing, rather than the be-all and end-all. The actual facts of the case were then packaged to fit a certain notarial frame. This happened, for example, in northern Italy by the tenth century, where the *placitum* featured almost uniform phrases and structure.<sup>6</sup>

Many, but not all, of the records that we have derive from a winner's point of view. The victor in court kept the document for future reference, and the loser's argument was not always fully recorded.<sup>7</sup> This itself can skew the balance of records in favour of those individuals or institutions that actively preserved their documents, with the inevitable result, for the middle ages at least, that many churches and monasteries appear to have been regular and successful participants in court cases.

Furthermore, as Ross Balzaretto has recently pointed out, monasteries like Sant'Ambrogio at Milan were prepared to create and alter records to suit their case in a dispute, and succeeded in winning as a result.<sup>8</sup> This is not to say that documents achieved a uniform authority across the whole of Italy. The majority of court cases in both Gaeta and Naples in the South were still settled by oaths in the tenth century, sometimes in the face of documentary evidence which was rejected.<sup>9</sup>

Returning to the issue of the court appearance as simply a part of the dispute, we then have to come to terms with the fact that much more of the dispute may have been oral; that there may have been many more factors at work before the case arrived in the documented

court; and that the dispute may have rumbled on, or even escalated, after the parties had said their piece before the local judge or dignitary.

Direct evidence of this can be found among the documents from southern Italy. A dispute between the bishop of Gaeta and two men, heard by the rulers of that city in 867 and decided in the men's favour, flared up again a generation later, with a new bishop and the men's sons, and once more the bishop lost.<sup>10</sup> In 1098 the case of Genesius of Stilo in Calabria was heard after he had, he said, made many complaints against the defendants, the monks of St John Theristes. His frustration is apparent: 'year after year', he said, the monks had made presents to the authorities.<sup>11</sup> Similarly, in Bari in 1155, the abbot of a local monastery stated that he had already made a complaint about boundary transgressions by Richard Turgisio and Sivilia his wife.<sup>12</sup> When a certain Ylaria of Serracapriola faced a claim against her landholding in 1183, she replied through her advocate that she had already proven that the land was hers at the court of the countess of Molise. Although she does not say so specifically, the likelihood is that she had obtained a document there, and could wave it at her opponent. It may also be significant that this case was brought before a local judge, who would have acknowledged the higher authority of the countess' court. Thus the plaintiff dropped his case.<sup>13</sup> But there was no guarantee that this was the last round in the battle.

If disputes had a history before they are recorded in court, then many may have been settled without ever having arrived before a judge. A more satisfactory outcome than winners and losers might have been a compromise settlement, where both parties were appeased in some way and no honour was lost on either side. Records of such compromises at court survive in some numbers. The 'advice of friends' was sometimes sufficient to persuade a litigant to drop a case.<sup>14</sup> Although we must be careful of reading too much into an absence of documents, it is certainly the case that no record exists of a compromise having broken down, in contrast to the breakdown of previous decisions in favour of one side or the other.

As well as this, we must consider whether the court appearance had anything to do with disputing at all. Huguette Taviani-Carozzi has demonstrated a huge rise in the number of documented court cases before local judges in Salerno when that city underwent a change of regime: people here were confirming property that they had held under the previous ruler.<sup>15</sup> To take this a step further, a dispute might be deliberately provoked in order to have property ownership recorded in a

document. After the German emperor Henry VI's assumption of power in southern Italy in 1196, the archbishop of Brindisi was able to obtain a judgement from his chancellor against a certain Andoysa, of whom we shall hear more.<sup>16</sup>

Other occasions could arise when such confirmation was necessary. In 1199, Asconias the wine-seller successfully represented his wife and her sister at court in Monopoli when they claimed an inheritance from one deceased John. Here the land was not in dispute, but the women's claim to it had to be validated because documents proving John's ownership of the land were missing. Only the court, it seems, had the authority to order that the local notary's records be examined and a copy made.<sup>17</sup>

With these general points in mind, what is the value of southern Italian court case records as evidence for women's lives? Of the 240 cases I have examined, only 27 involve women acting alone in defence or pursuance of their case. Of these 16 won and 7 lost, the outcome being unclear in the remainder (see table 1). So we have two telling figures: a very small minority of actors was women, but when they came to court they more often than not won.

First, it is necessary to explain why such a low number appeared. Did more women settle out of court, whilst men preferred the thrill of a legal battle? Or were women actively discouraged from attending court?

In medieval southern Italy, which was until 1130 made up of several political jurisdictions, two different traditions of law co-existed, Roman/Byzantine and Germanic. These had a direct influence on the capacity of women to organize their own affairs. In the Byzantine areas, there seems to have been little restriction on women managing their property, but in the Germanic Lombard districts, women were held to be incapable of any legal action (including land transactions, for example) without the intervention and permission of a male relative or the local public official.<sup>18</sup>

Despite their differing views of women's legal capacities, which were by no means rigidly enforced by the eleventh century, the two communities had a similar approach to women's involvement in court cases. This most public of arenas outside administrative office seems not to have been regarded as a fit place for a woman. In Lombard districts the precept that a woman was unable to legally represent herself in any transaction included court cases. Byzantine law limited women's actions in court to those cases affecting them personally, and

set out that women might be represented 'in order to save them shame'.<sup>19</sup>

Therefore, most recorded occurrences of women at court in a Lombard context find them accompanied or represented by their husbands or other men. In 1011 Archontissa, with her brother and her advocate, disputed with her stepson Andrea about her *morgengab* or morning-gift<sup>20</sup> and repayment of a debt from her late husband, Andrea's father. Andrea refused to repay the money, claiming that it had already been paid, but agreed to hand over the *morgengab*. In return she allowed him to take the debt note.<sup>21</sup> It seems that a compromise was being made here: in order to gain the more valuable asset of a quarter of her former husband's lands, Archontissa used the debt note as both a carrot and a stick. Forgoing the substantial sum of 12 *solidi* owed to her, she persuaded Andrea to release her estates. That the money may have meant far less is suggested by the fact that the debt note was seventeen years old; she may therefore have held onto it for just such a purpose.

With representation, a woman did not need to come to court at all. In 1122 Maiurella of Bari's husband represented her. This time the argument was not over property *per se*, but about the opponent and his men throwing dung into a communal alley, which Maiurella unsurprisingly objected to.<sup>22</sup> In 1196 Musandus de Vesta, on behalf of his wife and her sister, claimed land from the monastery of St Leonard, Siponto, but with the agreement of the two women settled for 12 *solidi* cash instead.<sup>23</sup> In the absence of a husband or other male relative, a male advocate could be used. Ylaria of Serracapriola, whom we have already met, had such representation in 1183. Guaragna of Bari, when she was in dispute over possession of a mill and a slave girl with a man from Ravello in 1141, gave her oath via an advocate and won.<sup>24</sup>

A male advocate might be used if the husband was unwilling to take up his wife's cause. This happened at Bari in 1100. The church of St Nicolas accused two women of illegally holding the lands of a man tied to the church. The women's husbands disclaimed any responsibility, so the court asked the women whom they wanted as advocates. The women asked their husbands to represent them. They claimed that the land at issue had been willed to them by a certain Rigellus. The church replied that their document was invalid because tied men could not dispose of goods this way, and produced proof of Rigellus' status. The judge decided in favour of the church.<sup>25</sup> It is

interesting here to speculate on the men's reasons for initially refusing to help their wives - did they know that the case was untenable? If so, there are definite echoes here of the women having taken some action without their husbands' sanction or knowledge, which only came to light when the church objected to it.

Even if most women in Lombard areas complied with the legal restrictions surrounding them, there were exceptions which reveal a growing fluidity in customs whose origins were in the laws of the sixth- and seventh-century Lombard kingdom in the North. Thus in 1039 the widow Alfarana gained a Bari court's judgement that her son John should not be able to take property willed to her guardianship in 1019 whilst her sons were minors. This was a notable victory - her son John was at least twenty by now and entitled to take over management of the property.<sup>26</sup> In 1060 Sifa of Bari successfully claimed a quarter of the lands given by her late husband to the church as her *morgengab* or morning-gift, and had Lombard law on her side.<sup>27</sup>

It is striking that both these cases, and those in which we see Lombard women actively pursuing complaints accompanied by their male relatives, took place in Bari. Although in Apulia, an area of Lombard culture, the city was the centre of the Byzantine administration of the area, and its inhabitants appear to have been receptive to Byzantine influences in this particular instance. Elsewhere, Lombard custom appears to have held firm - there are no documented instances of women appearing alone in other cities of Apulia.<sup>28</sup>

Turning now to women in Byzantine areas, did they conform to the stipulation that they only defend their own interests? It seems so, and the fact that they were able to pursue a case on their own results in one or two disputes entirely between women. Thus in Messina in 1171, Cale and Spezia, both widows, fought over a house. Since, in the words of the record, neither could prove her case 'except with heated appeals', a settlement was agreed whereby Cale dropped the case for money.<sup>29</sup>

An early and valuable series of documents from Naples reveals the success of one woman in her dealings at court. Pitru of Naples was a particularly active and successful litigant. In 963 she had her neighbour's window closed up because it looked into hers, and won a further two cases, brought against her over land, through the use of oaths.<sup>30</sup>

Elsewhere in Byzantine Italy, Theodote of Stilo, defending the claim of two plaintiffs over land which she said had been given to her as dowry, brought local officials and the bishop as witnesses to swear to her case in 1093.<sup>31</sup> And in 1175 a priest and widow dropped their claim to land in Ravello when Grusa, the defendant, swore that it had been held communally for 40 years.<sup>32</sup> There are other, similar cases of women in Byzantine areas acting alone.<sup>33</sup>

As always with rules, there are exceptions. In 1007 Drosu came to court at Amalfi to represent her husband. Technically, she was not defending her own property, as Byzantine law demanded.<sup>34</sup> This may, however, be connected to a special set of circumstances. The city, the centre of a small, independent duchy from the mid-ninth century until submitting to the Normans in 1071, is best known as an enterprising trading port, with communities of merchants all over the Mediterranean.<sup>35</sup> In these rather special conditions, local customs adapted, and the wives and mothers of the merchants and seamen acted for them whilst they were away. This seems to have given rise to a considerable discretion and freedom of action on the part of the women which is not seen elsewhere. Thus it is not surprising to find documentary evidence of lone Amalfitan women pursuing and defending cases.<sup>36</sup>

Even if lone women were permitted to bring and defend cases on their own behalf in Byzantine courts, this did not prevent them from choosing to have male help. Many of the women appearing at court did so with men from their family or friends.<sup>37</sup> Sometimes even this was no guarantee of success. At Cassano Ionio in 1157 the female defendant, Arialda, had an advocate, through whom she made her reply, but lost her case because he would not, as her representative, engage in a trial by combat to prove her words. Clearly he was less than confident in her protestations.<sup>38</sup>

This is one of the few examples we have of the trial by combat being recorded in southern Italy. In a very much earlier case, at Gaeta in 999, the *missus* of emperor Otto III had ordered two defendants to prove their argument in battle, but they had refused and produced a payment instead.<sup>39</sup> A duel was actually fought at a court case in Barletta in 1183.<sup>40</sup> Arialda's advocate, however, seems to have reflected a general southern Italian hostility to this method of proof. It was highly unusual here, and each appearance in the records represents an episode of northern European influence.



Modesty and propriety seem to have been the prescription for women throughout most of their recorded history. The low number of lone women recorded at court in medieval southern Italy suggests that the cultural and legal aversion to their presence held for a long period.

There may be another reason for the low number of lone women at court, and this deals too with my question whether they more often settled before the case 'went public'. In two cultures where honour was vested most explicitly in the status of the male head of the household, and where women's honour therefore reflected on him, the defeat of a man in a public court by a woman might have been particularly humiliating. A women acting alone probably also came under considerable pressure from her own family to settle instead of becoming involved in an unseemly battle, and this can in part explain their relative absence in recorded court cases. Confirmation of this attitude comes from the largely anecdotal but nevertheless revealing *Chronicon Salernitanum*, an anonymous history of the princes of Salerno written in the tenth century. In one episode, the wife of a certain Nannigone is raped by the prince. Her response, when Nannigone returns home, is to beg him to kill her; he instead tells her to bathe and put on fresh clothes. Neither partner seems even to consider attempting to bring the prince to justice.<sup>41</sup> The shame (and, presumably, the futility of challenging the prince) prevents them from acting.

There is one group of women, abbesses, who are characteristically presented in general histories of medieval women as set apart from their contemporaries.<sup>42</sup> Their slightly different role in disputes is illuminating.

In Byzantine southern Italy, being an abbess seems to have allowed a woman to act as an honorary male. In 1000, the abbess of St Archangel was in dispute over offerings to the episcopal church of Naples, and won when she swore she did not owe them.<sup>43</sup> Similarly, she won another case in 1024 against a cleric.<sup>44</sup> In 1037 Theodonanda, abbess of the Amalfitan convent of St Maria, settled a dispute over borders with members of one of the local noble families.<sup>45</sup> The abbess of another Neapolitan convent, St Gregory, represented her house in a settlement of 1151.<sup>46</sup> In 1175 the abbess of St Maria in Brindisi, another Byzantine area, represented her house to settle a dispute with local nobles over lands and oxen.<sup>47</sup> Again, in defending her convent, the abbess was not dealing with her own property, according to Byzantine law. Rather, she was acting as a representative, a role

normally denied women, and this is closely linked with her gender-neutral, or even masculine, role as head of her community.

In the Lombard world, however, abbesses do not seem to have been able to transcend the role assigned to their sex, from the limited evidence that we have. Thus in 1135, a Lombard abbess, Agatha of St Benedict in Polignano, had an advocate, as did Faustira abbess of St John Giovinazzo in 1149, when she sought defence against slanders.<sup>48</sup> However, clerics both male and female may have required advocates in parts of southern Italy (the abbot at Cassano Ionio in 1157 certainly had one), and so an argument on the basis of gender may not be appropriate here.

Most of the women discussed above used the same types of evidence as men - oaths, witnesses, documents and appeals to the law - to make their cases. There does not seem to have been any bar to a woman swearing an oath once she had gained access to the court hearing, either directly or via an advocate. But what circumstances might cause a woman to come to court? Here an interesting regional difference emerges, for most of the women in Lombard areas were disputing over family matters, often with another member of the family. Six of the eight Barese cases listed fall into this category, whilst elsewhere it is often difficult to decide whether the land at issue is family property or the result of a simple commercial transaction. I suggested above that the court at Bari may have been influenced by Byzantine practice: if we remember that Byzantine law allowed women to fight for their own interests, it appears that many of the women who did so in the city were taking this as their justification.

In the case of most Lombard women, however, their legal status was a marker of difference even before the case began. Thus in 1107, when the (male) cousin of Domnula brought a case on her behalf at the court of Bari, the judge had first to check with her whether she wished to be represented in this way.<sup>49</sup> She replied that she had sent her cousin, and later in the proceedings sent her uncle to make an oath on her behalf. When the disputed property was divided, she was given the choice which piece to take, and again was consulted. Thus throughout the case, her absence from court and the fact that male relatives were representing her caused delay and inconvenience. In certain cases, this might even have prejudiced the woman's case. At Brindisi in 1196, Andoyisa faced a complaint by the archbishop over land. She had no documentary proof of her defence, and then lost her

advocate and claimed she could not find another. The court decided she was 'malicious', and she lost.<sup>50</sup>

However, there may be another side to the special conditions surrounding women at court which has not previously been examined. That is, women may have exploited the restrictions surrounding them in order to try to win cases. I would argue that to read women as victims of such restrictions is sometimes erroneous. This is illustrated in the case of women and poverty in the medieval period, where it can be argued that women may have taken advantage of their supposed vulnerability to make unusual demands.<sup>51</sup>

For a Lombard woman at court, her ambiguous legal status might be seen as an empowerment of sorts. This is not a new line of argument by any means. It has long been recognized that the presumption of a woman's fragility was a two-edged sword in medieval Italian society, incapacitating her in civil law but also protecting her from criminal accusations.<sup>52</sup> I would take this argument a step further, however, to say that it might also be of use in the civil cases which I have discussed.

Although most of the surviving court case records are fairly standard in their procedures, there are a few which reveal a certain amount of tactical action on the part of the opponents. For example, when Domnula's cousin acted for her in 1107, the defendant, Cafarus, initially delayed his appearance at court to hear the oaths of Domnula's witnesses. Examination of other court cases, not involving women, reveals delay to have been a common ploy on the part of defendants. In Lucania in 1042, the proceedings were held up whilst the piece of land in question was accurately defined, witnesses having to be called initially by the defendant to establish which vineyards were *not* at issue.<sup>53</sup> In addition, defendants would often request clarification of the charge before answering to it. In Salerno in 1065, Leo would not respond to the charge that he was illegally entering a monastic estate until the plaintiff physically showed him the lands referred to. Eight years later, another man accused by the monastery responded with exactly the same tactic.<sup>54</sup>

Even if the defendant lost, he might still fight a rearguard delaying action. Faced with a decision against him at Barletta in 1155, Leontius claimed that he could not return the disputed lands because he had pledged them as security for his wife's dowry. The judges did not view his plea with sympathy, but it is interesting that Leontius, in effect, tried to transfer the blame to his wife.<sup>55</sup>

Finally, with most relevance for this discussion of women at court, a fragmentary document of 1105, written at Bari, records how the plaintiff, Peter, had already won a judgement against the defendant, John. Now he was asking for it to be repeated, but John claimed he would need an advocate 'since he did not know how to dispute in this law.' This may point up the problems of two neighbouring cultures in southern Italy, but it also served to delay proceedings.<sup>56</sup> It is strikingly similar to the case involving Andoysa, mentioned above. Could not Andoysa's plea in 1196, that she could not find another advocate, represent the same kind of delaying tactics? In neither case did delay work, but it is a sign that women may have been as fully conversant with the kind of manoeuvres available in an argument as men were.

Another illustration of this might be in a court case of 1055, in which Gregory Monteincollu asked the duke of Amalfi for a judgement on his boundary dispute with two widows, Gemma and Boccia. The women in this case, since we are here in a Byzantine context and since they did not therefore require representation, simply refused to come to court to answer Gregory's complaint. Perhaps they argued that they were saving themselves the shame of a court appearance, as Byzantine texts had it. Again the tactic failed: the duke simply confirmed Gregory in his lands as set out in the documents that he had brought.<sup>57</sup> A judgement against two male defendants, who similarly ignored a summons to court, shows that this was not a peculiarly feminine manoeuvre, however.<sup>58</sup>

Reading some of the cases we have already met in this light, there seems to be some evidence that women used both tactics employed by men in court, and moves which they alone could exploit. Why, when their husbands refused to become involved in a case on their behalf in 1100, did the two women accused by the church of St Nicolas in Bari nevertheless persist in choosing the hapless men as their representatives? Did they think that their husbands' protests might waste a little more time, or divert the court's attention away from the matter at issue?

It is difficult to extrapolate from the small sample of women acting alone in southern Italian courts in order to decide whether they were more successful than men when they got there. Neither men nor women seem to have been particularly successful when disputing with clerical opposition: of the nine cases in table 1, six seem to have ended with the woman losing out, but this compares favourably with

the success rate of men, where the ecclesiastical side won fifty-eight of sixty-nine recorded clashes.

The success of the clergy may simply reflect the bias in preservation discussed above,<sup>59</sup> but the high number of men's disputes appears to suggest that men more often took on hopeless cases against a powerful institutional opponent, whilst women only came to court if they were fairly certain of their claim. This may explain the high proportion of victories for women in the overall total of twenty-seven cases. When they had admissible evidence in court, this usually secured them the victory or a satisfactory compromise. When they faced such evidence against themselves or attempted delay they, as often as men, failed to win the court's sympathy. What was different was the cause of delay (Lombard women needed representation, and could prevaricate in obtaining it) and women's level of access to courts given the cultural distaste in both societies of their presence there.

Are the women who do appear alone truly representative of women as a group in southern Italy? The answer lies not in the court case records in isolation, which taken at face value might give a false impression of the success rate of women in proportion to the numbers reaching court. Chris Wickham has pointed out that our understanding of court cases 'depends on the content of our *other* evidence about the people concerned'.<sup>60</sup> Nowhere is this a more apt warning than in the case of women at court. The success of Pitru of Naples in the three cases mentioned plus a further two, one with her husband, suggests that she was more than a sharp tactician in court, and further investigation revealed that she was in fact a member of a cadet branch of the ducal house of Naples.<sup>61</sup> The stature of the witnesses that Theodote of Stilo was able to call suggests that she was already quite a powerful woman locally. In Bari, it is likely that Alfarana, who prevented her grown-up son from taking over much of his dead father's property, was also a member of a local noble family. Furthermore, this family would take the surname Alfaraniti, suggesting a so-far unknown prominence of women in Barese society.<sup>62</sup>

A further, significant factor in these cases is the very high proportion of widows among the litigants. It is now generally accepted that widowhood in medieval society could be a time of enhanced status and influence. At the same time, a widow might face challenges to her property-holding from any number of kin. Of the twenty-seven southern Italian cases listed, a substantial number, eleven, had widowed litigants. Their status as even temporary heads of their

households may well have secured them easier access to court, but this does not appear to have enhanced their success rate. In this respect, the southern Italian evidence mirrors that from other parts of medieval Europe.<sup>63</sup>

The value of court cases as evidence, then, is that they point up occasions when women had to enter the public gaze to secure their rights or a just settlement of a dispute. That such a low number appears in the particular sample I have discussed shows that this role was not, as yet, one to which women were thought to be suited. One can only speculate on the amount of pressure a woman was put under not to transgress certain limits of behaviour. In the case of wills, I have previously argued that women's theoretical right to bequeath property to whom they pleased was compromised by their unwritten duty towards their family and children.<sup>64</sup> So, in a case of dispute, it might have been necessary to suppress a woman's protests before she was able to get to court. Even if she got there, subtle pressure still might be exerted. In 1183, at Naples, Sikelgaita Cacapice ceded property in dispute to the convent of St Gregory for the sake of her soul, suggesting that other means of persuasion besides family shame might be employed.<sup>65</sup> Later medieval evidence from northern Italy suggests that women's right to litigate continued to be viewed with ambivalence. Julius Kirshner highlights the contradictions present in jurists' attempts to construct a framework in which a wife might prevent the dissipation of her dowry by her husband. Quite apart from all the legal niceties surrounding the status of the property itself, she might be hampered by having to ask her father's permission to proceed. Being able to gain male support for her claim might also have been as important as the actual legality of her case.<sup>66</sup>

Ultimately, then, the court cases surviving from southern Italy, just as from many other regions, may say more about the determination of the individuals who do appear. A key issue appears to be the fact that early medieval courts did not have a firm legal tradition to cite: it is striking that of the cases listed from southern Italy, only one, Sifa's, appears to have been won on a legal point. The remainder relied on compromise or for the most part on oaths. In this respect they reflect widespread patterns of litigation in the early middle ages.

Were women discriminated against in the legal process? The evidence speaks for itself: the remarkably low number of women appearing is not, I would suggest, an accident of survival. Women's right to contest cases was compromised by their legal status overall.

Ironically, it may have been their perceived vulnerability that led to those few who did reach court gaining a victory: to be seen as a protector of the weak was an important positive quality to those in power. The records of women's appearances nevertheless highlight the limitations on their freedom of action. And such limitations, deriving from medieval Lombard laws and customs, persisted in Apulia until the sixteenth century.<sup>67</sup>

**Table 1: Women Litigants in Southern Italy**

Date	Place	Plaintiff	Defendant	Object	Winner / evidence
952	Naples	Theoctista+	John	land	division
963	Naples	Pitru	Stephen	window	Pitru
966	Amalfi	Peter & wife	Joanna	mill	Joanna
970	Naples	Gemma	Pitru	land	Pitru (oath)
974	Naples	Peter & wife	Pitru	boundary	Pitru (oath)
978	Naples	Anna+	monastery	land	monastery (oath)
981	?Amalfi	Sparanus	Drosu	land	settlement
997	Naples	Stephen & wife	Mira	land	Mira (oath+ payment)
1003	Bari	Calomaria & d	Caloiohannes	marriage goods	Calomaria (law?)
1007	?Amalfi	Drosu for husb.	abp Amalfi	land	Drosu (paid for land)
1011	Bari	Aachontissa*+	stepson	debt/ <i>morgengab</i>	compromise
1032	Gaeta	John	Matrona+	mill	Matrona (v plaintiff's document)
1033	Bari	Bona	brothers	house	division (Bona claimed whole)
1039	Bari	Alfarana+	son	inheritance	Alfarana (doc. judges)
1055	Amalfi	Gregory	Gemma+ & Boccia+	land	Gregory (G&B refuse to appear)
1060	Bari	SIFA+	abbot	<i>morgengab</i>	Sifa(law?)
1093	Stilo	Simon	Theodote	land	Theodote (witnesses)
1100	Bari	archbishop*	Laita* & Grimm*	land	abp(document)
1107	Bari	Domnula*	Cafarus	house, goods	Domnula (prev. win witnesses)
1141	Bari	Guaragna*	Mauro	mill, slave	Guaragn(oath)
1157	Cassano Ionio	abbot*	Arialda*+	land	abbot (A's adv refuses to duel)
1157	Ravello	Urso pbr	Rosata+	land	Rosata

1171	Messina	Ragusa+	Spezia+	house	compromise
1175	Ravello	Herman pbr	Grusa+	land	Grusa (oath)
1183	Naples	Sikelgaita	convent	land	conventl
11183	Serracapriola	Simon	Ylaria*	land	Ylaria (prev. win)
1196	?Brindisi	archbishop	Andoysa	land	archbishop

\* party has an advocate + party widowed

## NOTES

1 I am indebted to the British Academy for the Postdoctoral Research Fellowship which enabled me to study the women of medieval southern Italy. The British School at Rome has provided financial support and a congenial working environment. This paper was first given at the Third Annual Conference of the Women's History Network, Nottingham, October 1994, whose participants provided me with valued criticism. I am grateful to Chris Wickham for his comments on an earlier draft.

2 S. Shahar, *The Fourth Estate: a History of Women in the Middle Ages*, London 1983, pp.11-21, discusses both categories. See also S.M. Stuard, *Women in Medieval Society*, Philadelphia 1976, p.9; for a critique of the traditional definition of 'power' as linked with public office, see *Women and Power in the Middle Ages*, ed. M. Erler and M. Kowaleski, London 1988, pp.1-17. Medieval queens, the most visible women in power, have formed the subject of a recent collection of essays on *Medieval Queenship*, ed. J. Carmi Parsons, Stroud 1993.

3 Most notably for this period, *The Settlement of Disputes in Early Medieval Europe*, ed. W. Davies and P. Fouracre, Cambridge 1986. Most recently for Italy, Chris Wickham, 'Ecclesiastical dispute and lay community: Figline Valdarno in the twelfth century', *Mélanges de l'Ecole Française de Rome: Moyen Age* 108, 1996, 7-93.

4 Although a few of the studies in *Settlement of Disputes* make reference to individual females, only Jinty Nelson's paper, 'Dispute settlement in Carolingian West Francia', p.58, examines women's legal status at court in any more than a passing reference. Roger Collins, 'Disputes in early medieval Spain', *ibid.* p.94, simply states that there were no restrictions on women's initiation of litigation; whilst Chris Wickham, 'Land disputes and their social framework in Lombard-Carolingian Italy', *ibid.*, p.111, states that women had no legal standing in Lombard courts, a situation which the present study examines in more detail. Where studies have been made of women in court, they have been limited in their focus: e.g. J. Kirshner, 'Wives' claims against insolvent husbands in late medieval



Italy', in *Women of the Medieval World*, ed. J. Kirshner and S. Wemple, Oxford 1985, pp.256-303.

<sup>5</sup> I have examined the use of writing as a political statement more fully in P. Skinner, *Family Power in Southern Italy: the Duchy of Gaeta and its Neighbours, 850-1139*, Cambridge 1995, pp.19-23. On courtcases as a means of expressing power, *ibid.*, pp.93-97. See also, R. Morris, 'Dispute settlement in the Byzantine provinces in the tenth century', in *Settlement of Disputes*, p.140. Morris uses evidence from the far South of Italy to support her findings.

<sup>6</sup> The extant *placiti* from northern Italy are edited in C. Manaresi, *I Placiti del 'Regnum Italiae'*, I-III, Rome 1955-60. See also R. Balzaretti, 'The monastery of Sant'Ambrogio and dispute settlement in early medieval Milan', *Early Medieval Europe* 3, 1994, p.2 and bibliography.

<sup>7</sup> By the late ninth century, 'editing out' the loser's argument and simply recording his or her capitulation had become standard in northern Italian *placiti*: Manaresi, I, p.xviii. A fuller record of the two sides' arguments continued to be made in the South, however.

<sup>8</sup> Balzaretti, 15-18. Another, notorious, example of such falsification in a southern context was the attempt by Peter the Deacon to support Montecassino's claim to vast tracts of land in the South and elsewhere: H. Bloch, 'The schism of Anacletus and the Glanfeuil forgeries of Peter the Deacon', *Traditio* 8, 1952, 159-264; A. Mancone, 'Il Registrum Petri Diaconi', *Bullettino dell'Archivio Paleografico Italiano* 2-3, 1956-7; H. Hoffmann, 'Chronik und Urkunde in Montecassino', *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 51, 1972, pp.93-206; G. Loud, *Church and Society in the Norman Principality of Capua*, Oxford 1984, pp.78-79, 183-84; idem, 'A Calendar of the Diplomas of the Norman Princes of Capua', *Papers of the British School at Rome* 49, 1981, pp.99-143.

<sup>9</sup> See, for example, *C[odex] D[iplomaticus] C[ajetanus]*, I, Montecassino 1887 16 (890), *CDC* 39 (936) and *CDC* 56 (958). In another case, in 945, a charter used as evidence is torn up, *CDC* 47; a compromise is reached in a case in 957 which oaths have failed to settle, *CDC* 54.

<sup>10</sup> *CDC* 13, *CDC* 48.

<sup>11</sup> *S. Jean-Théristes (1054-1264)*, ed. A. Guillou, Vatican City, 1980, document 3.

<sup>12</sup> *C[odice] D[iplomatico] B[arese]*, V: [*Le Pergamene di S. Nicola di Bari (1075-1194)*], ed. F. Nitti di Vito, Bari 1902], document 112.

- <sup>13</sup> *C[odice] D[iplomatico] P[ugliese]*, XXX: [*Le Cartulaire de S. Matteo di Sculgola*, I, ed. J.-M. Martin, Bari 1987], document 23.
- <sup>14</sup> As, e.g., in the cases of Robert de Brittus, who agreed to make a payment to settle a case: *Les Actes Latins de S. Maria di Messina (1103-1250)*, ed. L.-R. Ménager, Palermo 1963, document 7 (1158); Musandus de Vesta, persuaded to drop a case against the monastery of St Leonard, Siponto, in 1196: *Regesto di S. Leonardo di Siponto*, ed. F. Camobreco, Rome 1913, document 107.
- <sup>15</sup> H. Taviani-Carozzi, *La Principauté Lombarde de Salerne, IXe-XIe Siècle*, Rome 1991, I, p.577, makes the point that land disputes and the signatures of judges on documents from that city increased dramatically when there were crises of rule in the principality. People trusted to the law to preserve their possessions in periods of instability.
- <sup>16</sup> *Codice Diplomatico Brindisino di Annibale de Leo*, (492-1299), I, ed. G.M. Monti, Trani 1940, document 33.
- <sup>17</sup> *CDP XX: Le Pergamene di Conversano*, (901-1265), I, ed. G. Coniglio, Bari 1975, document 147. This is a valuable case, for it is the earliest evidence that southern notaries, like their northern counterparts, kept copies of the documents they wrote.
- <sup>18</sup> Rothari 204, in *The Lombard Laws*, trans. K.F. Drew, Philadelphia 1973, p.92.
- <sup>19</sup> J. Beaucamp, 'La statut juridique de la femme à Byzance', *Cahiers de Civilisation Médiévale* 20, 1977, pp.149 and 155
- <sup>20</sup> Lombard law allowed women up to a quarter of their husbands' property as a morning-gift on consummation of their marriage: Liutprand 7, in Drew, p.147.
- <sup>21</sup> *CDB IV: Le Pergamene di S. Nicola di Bari (939-1071)*, ed. F. Nitti di Vito, Bari 1900, document 11.
- <sup>22</sup> *CDB V*, document 67.
- <sup>23</sup> *Regesto di S. Leonardo*, document 107.
- <sup>24</sup> *CDB V*, document 94.
- <sup>25</sup> *CDB V*, document 32.
- <sup>26</sup> *CDB IV*, document 27.
- <sup>27</sup> *CDB IV*, document 39.

<sup>28</sup> I have not, for the purposes of this survey, examined the copious charter evidence from the Lombard principality of Salerno. Being close to both Naples and Amalfi, former Byzantine enclaves, one might expect a certain amount of mutual exchange with regard to customs, but the main trend appears to have been for Amalfitans moving into the principality to adopt Lombard law, rather than the reverse. Thus, one might expect the women of this area to be as conspicuously absent from the courtcase records as their contemporaries in Apulia.

<sup>29</sup> *I Diplomi Greci ed Arabi di Sicilia*, ed. S. Cusa, Palermo 1868, 1882, document 112.

<sup>30</sup> *Monumenta ad Neapolitani Ducatus Historiam Pertinentia*, ed. B. Capasso, Ili, Naples 1885, documents 73, 180 and 201 respectively.

<sup>31</sup> *S. Jean-Théristes*, Appendix, document 1.

<sup>32</sup> [*Le*] *P[ergamene degli] A[rchivi] V[escovili di] A[malfi e] R[avello]*, II, ed. C. Salvati, Naples 1974, document 79.

<sup>33</sup> For example, Capasso, *Monumenta*, document 217 (978), Anna Pictuli, a widow, loses a case against SS Sergius and Bacchus in Naples; *ibid*, document 76 (952), Theoctista, of the same Pictuli family, agrees to a settlement; and document 304 (997), Mira Muca gives an oath and money to keep some disputed property. (See table 1.)

<sup>34</sup> *C[odice] D[iplomatico] A[malfitano]*, ed. R. Filangieri di Candida, I, Naples 1917, document 21.

<sup>35</sup> Amalfi's commerce has formed the subject of work by A. Citarella: 'Patterns in medieval trade: the commerce of Amalfi before the crusades', *Journal of Economic History* 28, 1968, 531-555; 'Scambi commerciali fra l'Egitto e Amalfi in un documento inedito della Geniza di Cairo', *A[rchivio] S[torico per le] P[rovince] N[apolethane]*, 3rd. ser. 9, 1971, pp.141-149; 'Il declino del commercio marittimo di Amalfi', *ASPN*, 3rd. ser. 13, 1975, pp.9-54; see also M. del Treppo and A. Leone, *Amalfi Medioevale*, Naples 1977, and D. Abulafia, 'Southern Italy, Sicily and Sardinia in the medieval Mediterranean economy', in *idem, Commerce and Conquest in the Mediterranean, 1100-1500*, London 1993, essay I, p.17.

<sup>36</sup> E.g. *CDA*, II, ed. R. Filangieri di Candida, Trani 1951, document 587 (952), Maria the widow settles; [*Il*] *C[odice] P[erris]*, ed. J. Mazzoleni and R. Orefice, I, Amalfi 1985, document 29 (966), Joanna daughter of Maurini the count wins; *CP* 5 (981), Drosu daughter of Pulchari wins; *PAVAR* II, document 55 (1157), Rosata the widow wins; *PAVAR* II, document 79 (1175), Grusa the widow wins. Like their contemporaries in

other Byzantine areas, however, the women of Amalfi did not always act alone: *CP*, document 30 (984), Leo the count and Theodonanda his wife win; *PAVAR I*, ed. J. Mazzoleni, Naples 1972, document 25 (1094), Sillecta the widow and her sons settle.

<sup>37</sup> A series of cases from Naples conforms to this pattern, with women appearing alongside husbands, brothers and other men: Capasso, *Monumenta*, documents 74 (951) and 80 (952), couples win; 210 (976), brothers and sister lose; 259 (989), group including women loses; 340 (1011), brother and sister with her husband win; 354 (1014), consortium including women loses; 371 (1016), three sisters and brother and two husbands divide land with monastery; and 418 (1028), two men and a woman swear they own houses and give money to secure them from defendant.

<sup>38</sup> *Carte Latine di Abbazie Calabresi provenienti dall'Archivio Aldobrandini*, ed. A. Pratesi, Vatican City 1958, document 20.

<sup>39</sup> *CDC* 100.

<sup>40</sup> *CDP XXI: Les Chartes de Troia*, I, ed. J.-M. Martin, Bari 1976, document 102.

<sup>41</sup> *Chronicon Salernitanum*, ed. U. Westerbergh, Stockholm 1956, chapter 65.

<sup>42</sup> See, for example, B. Anderson and J. Zinsser, *A History of Their Own*, I, London 1989, pp.183-93. On Byzantine abbesses, J. Herrin, 'In search of Byzantine women: three avenues of approach' in *Images of Women in Antiquity*, ed. A. Cameron and A. Kuhrt, London 1983, pp.179-81. See also, for a more general discussion, J. Herrin, 'Public and private forms of religious commitment among Byzantine women', in *Women in Ancient Societies: 'an Illusion of the Night'*, ed. L. Archer, S. Fischler and M. Wyke, London 1994, pp.181-203.

<sup>43</sup> Capasso, *Monumenta*, document 313.

<sup>44</sup> *Ibid.*, document 400.

<sup>45</sup> *CDA*, I, document 49.

<sup>46</sup> Naples, Archivio di Stato, *Monasteri Soppressi* 3437, document 175.

<sup>47</sup> *Codice Diplomatico Brindisino*, document 20.

<sup>48</sup> *CDP XXI*, document 83 and *CDB V*, document 102 respectively.

<sup>49</sup> *CDB V*, document 46.

<sup>50</sup> *Codice Diplomatico Brindisino*, document 33.

- <sup>51</sup> P. Skinner, 'Gender and poverty in the medieval community' in *Medieval Women in their Communities*, ed. D. Watt, University of Wales Press, forthcoming.
- <sup>52</sup> G. Rossi, 'Statut juridique de la femme dans l'histoire du droit italien', *Recueils de la Société Jean Bodin* 12/2, 1968, p.128.
- <sup>53</sup> *Saint Nicolas de Donnosio*, ed. A. Guillou, Vatican City 1967, document 3.
- <sup>54</sup> *Pergamene del Monastero Benedettino di S. Giorgio, (1038-1698)*, ed. L. Cassese, Salerno 1950, documents 4 and 5: this duplication of the tactic suggests that such a plea had almost become a standard ritual in Salernitan courtcases by this date.
- <sup>55</sup> *CDB VIII: Le Pergamene di Barletta, Archivio Capitolare (897-1285)*, ed. F. Nitti di Vito, Bari 1914, document 72.
- <sup>56</sup> *CDB V*, document 43.
- <sup>57</sup> *CP*, document 33.
- <sup>58</sup> *CDC* 140 (1021)
- <sup>59</sup> B.A. Hanawalt, 'The widow's mite: provisions for medieval London widows' in *Upon My Husband's Death: Widows in the Literature and Histories of Medieval Europe*, ed. L. Mirrer, Ann Arbor 1992, p.35, highlights the lack of success that widows here had against the clergy, and the pattern does not appear to rely on the survival of evidence.
- <sup>60</sup> 'Land disputes', p.122.
- <sup>61</sup> Skinner, *Family Power*, pp.44, 144-45.
- <sup>62</sup> A survey of twelfth-century families in the city reveals a considerable number with female-derived surnames, a phenomenon which requires further detailed study.
- <sup>63</sup> The pressures on Frankish widows from predatory kin, and their own assertiveness, is highlighted by S.F. Wemple, *Women in Frankish Society*, Philadelphia 1981, p.49 and J. Nelson, 'The wary widow' in *Property and Power*, ed. W. Davies and P. Fouracre, Cambridge 1995; the case of Ottonian widows is discussed by K. Leyser, 'Women of the Saxon aristocracy', in *Rule and Conflict in an Early Medieval Society*, Oxford 1979, p.62; later medieval evidence from England reveals the continued vulnerability of the widow with property: Hanawalt, 'The widow's mite', pp.26-35.
- <sup>64</sup> Skinner, 'Women'.

<sup>65</sup> Naples, Archivio di Stato, *Monasteri Soppressi* 3437, document 322.

<sup>66</sup> J. Kirshner, 'Wives' claims against insolvent husbands', *passim*.

<sup>67</sup> Kirshner and Wemple, p.257.